

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/536,351	03/27/00	DAMARLA	S 3900-003

HM12/0820

LUKE A KILYK ESQ
KILYK & BOWERSOX PLLC
3603 E CHAIN BRIDGE ROAD
FAIRFAX VA 22030

EXAMINER

LEVY, N

ART UNIT	PAPER NUMBER
1616	3

DATE MAILED: 08/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

09	Application No. 536351	Applicant(s) DAMARLA et al
Examiner Neil Long	Group Art Unit 16/6	3

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on 7/27/00

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-24 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-24 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

Art Unit: 1616

Receipt is acknowledged of IDS 7/27/00.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8, 10-13, 17-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

“STORAGE STABLE” is relative while “substantially” is indefinite.

Claim 6, 7, 10 are ambiguous, as no basis is given (vegetable oil or total formulation of oil+neem+surfactant) for the weight %.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-3, 5, 14, 17, 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by

Kleeberg-EP 0579624.

Art Unit: 1616

See claim 1: Azadirachtin with vegetable oil, neem seed oil and surfactant is present after removal of solvent, and can be diluted (claim 10 or 17): this is the instant pesticide, storage (storable--title) stable.

Claims 1-7, 14-17, 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Dimetry et al '97.

5 or 1% azadiractin from neem extract with tween, the instant surfactant .01% and sesame oil at 0.6%, then diluted with water--no organic solvents were used (P. 396, col. 1). Additives are only applied with substantially no water (0.6%).

Claims 1-5, 14, 15, 17, 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Schauer '83.

Neem extract with synergistic sesame oil and lecithin surfactant and glycerol are effective insecticidally (p. 143).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larson-4556562 in view of Kleeberg et al '94, Dimetry et al '97 and Ujihara-6034128.

Larson provides storage stable azadiractitin (summary) at the instant concentrate levels, with surfactant, neem oil, substantially no water or solvent (col. 2) stable up to 2 years. Dilution

Art Unit: 1616

with water is shown (col. 3, bottom). There is no sesame oil, nor A, B identification. Kleeber shows Azadirachtin constitutes A, B (p. 146) while Dimetry show synergistic efficacy with sesame oil (p. 396, col. 2) Azadirachtin with sesame oil neem oil, as insecticide is shown as well known by the prior art. Dimetry teaches one having ordinary skill in the art would be motivated to perform this modification in order to increase efficacy. The particular % mix of active, is a function of the compatibility of these ingredients.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize insecticidal natural compounds, to use Larson's, shown by Kleeber to constitute Azadirachtin A and B , with Dimetry's adjuvant to increase efficacy.

It would be obvious to vary the concentration and form of each ingredient to optimize the effect desired, and the use of ingredients for the functionality for which they are known to be used is not a basis for patentability. Neither has the particular surfactant been shown to be critical as it is used with neem by ^uWihara (col. 22, examples).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday to Friday from 7 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Art Unit: 1616

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy:mv

August 10, 2001

A handwritten signature in black ink, appearing to read "Levy" or "Neil S. Levy".

NEIL S. LEVY
PRIMARY EXAMINER